

TOWARDS A EUROPEAN PUBLIC SERVICE

*Speech delivered by **Spyros A. Pappas**, Director-General of EIPA, at the Conference on 'Effective & Efficient Public Management in the New Europe', Dublin, 23-30 April 1992**

The title of this lecture - 'Towards a European Public Service' - may seem to imply that there is no such service today. Consequently, I can allow my thoughts free rein on how it should develop and how it should be. Of course, as a lawyer I am accustomed to working with vague ideas but, again as a lawyer, I am tempted to make some concrete points out of these vague ideas, and this is what I am attempting to do today. I would like to formulate some answers to the question of what is this phenomenon referred to as the European public service. But how shall I start? If the final goal - the European public service and its definition - remains vague, I need at least to have a solid starting point, and that is what do we mean by the public service.

If we can define what the public service is, then we can attempt to find some answers to the question on the European public service. I suggest therefore that I first examine this meaning with you (A), although you may consider this quite easy. Then I propose to take a look at what the state of affairs is today (B) and, finally, in the light of the meaning we give to the public service and its evolution up till now in the European arena, we will be able to draw some conclusions as regards the European public service (C).

A. You may perhaps wonder why I insist on coming back to these questions, since some previous, very competent speakers have taken it for granted that there is a European public service and this was my impression as well when I was asked to develop this topic. I had already read a booklet, issued by the Office of Official Publications of the European Communities, on the 'European Commission and the Administration of the Community'. On the first page of this booklet you can read that this booklet 'seeks to reply to the many questions about the European public service with reference to the European Commission, which is the largest of the Community's institutions'. In addition, on the back, you can find another reference alluding to the fact that the European public service is the staff working at the EC institutions. If this is all there is to it, then there would be no reason for me to be here, I could just send you this booklet. This is not the case so I have therefore put together perhaps some novel concepts.

According to my legal culture, which is based on the continental doctrine, when I hear the public service mentioned I understand things differently to you. Let me refer to the French doctrine, because the French were the first and they influenced several of the other Member States, in particular the Southern ones, plus Belgium, Luxembourg and, to a certain extent, Germany. I found this definition in my university books. Allow me to quote from the original French: '*Le service public, c'est donc une activité d'intérêt général - gérée par l'Administration ou par une personne privée, à condition que celle-ci soit investie de cette mission par les pouvoirs publics et soumise à leur contrôle*' (Jacques Chevallier, *Le Service public*, Dossiers Thémis, PUF 1971, p. 20). Well, what is the gist of this definition? The gist is that there is a connection between the term 'public service' and the activity, related to the national interest. As a matter of fact, this is not an old concept. It was initiated by a decision of the French *Conseil d'Etat* in 1873, the decision called Blanco, and formulated as a doctrine in 1906 by G. Tessier in a book called '*La responsabilité de la puissance publique*'. In the beginning, the French thought that the public service-institution (administration) corresponded to the public service-activity. However, it was obvious, firstly, that the latter sometimes performs beyond the national interest and, secondly, that there are other bodies which can assume activities related to the national interest. Therefore, they reached the final conclusion in 1938, again by means of another famous decision of the *Conseil d'Etat* (C.E, 13 May 1938, R., p. 417, Caisse primaire aide et protection), which defined the public service, as I have just quoted, as an activity taken over either by the public service-institution or another agency, private or

otherwise (*concession du service public*).

I then turned to the British doctrine (Drewry G. and Butcher T., *The Civil Service Today*, 1988) and, first of all, I discovered that for the UK the public service is also a recent concept; it dates from 1870. Until then policy-makers and politicians were very reluctant to use or did not use at all the term 'public service'. They preferred to speak about public offices or public establishments. I would like to make an additional remark here: there is an additional difficulty in the UK in that most of the time you do not know whether people are speaking of the public service or the civil service. There is a difference; I will come back to this point later, but most of the time people speak of the civil service. The first definition of the civil service, the definition which I found, dating from 1931, suggested by the Tomlin Commission, is as follows: 'servants of the Crown other than holders of political or judicial offices, who are employed in a civil capacity and whose remuneration is paid wholly and directly out of monies voted by Parliament'. So, the civil service is related to those who work in it. I then realized that there is no agreement on the definition of the civil service in the UK; rather there is a way of defining who are civil servants by excluding those who are not. Are the following not public servants: ministers, members of Parliament, members of the armed forces, judges and chairmen of administrative tribunals, employees of Parliament, local government employees, employees of public corporations and quasi-governmental bodies.

What is the conclusion? I think that the conclusion that can be reached here is that the civil service corresponds to the French term '*fonction publique*', but this is not as simple as it seems. '*La fonction publique*' in France comprises all those who are paid out of public funds, not just the civil servants in the British sense. I would say that '*la fonction publique*' could correspond to the idea of the public service which goes beyond the civil service and also comprises local government officials and so on. On the other hand, the civil service may be the same as what is called in France '*les cadres*' or '*les hauts fonctionnaires*'.

This shows quite clearly how concepts can vary from Member State to Member State, how even terminology is different and how difficult it is to communicate on these matters. This is perhaps another deficit in our common language, but at least we have reached a conclusion. However, this is not the whole story; it continues because I have found two decisions of the European Court of Justice. The first (Arrêt du 3.7.1986, Affaire 34/86) annulled a decision of the President of the European Parliament approving the European budget. The Court cancelled the budget in the course of the financial year and it stated, among other things: '*la constatation de l'invalidité du budget 1986 intervient au moment où une partie importante de l'exercice 1986 s'est déjà écoulée. Dans ces circonstances, la nécessité de garantir la continuité du service public européen, ainsi que d'importants motifs de sécurité juridique comparables à ceux qui interviennent en cas d'annulation de certains règlements, justifient que la Cour exerce le pouvoir que lui confère expressément l'article 174, alinéa 2 du Traité CEE en cas d'annulation d'un règlement, et qu'elle indique les effets du budget 1986 qui doivent être considérés comme définitifs. Dans les circonstances particulières de l'espèce, il y a lieu de juger que l'annulation de l'acte du Président du Parlement ne peut pas mettre en cause la validité des paiements effectués et des engagements pris en exécution du budget jusqu'au jour du prononcer du présent arrêt*'. You see the Court used this term in the sense that the European public service is an activity, not a body of employees, not services carried out by staff. There is a second decision of the same nature referring again to those who work in private credit establishments (Arrêt du 7.4.1987, Affaire 166/85) '*ni les dispositions ni l'objectif de la directive 77/780 ne s'opposent donc à ce que soit conférée aux employés des établissements de crédit la qualité d'officier public ou de personne chargée d'un service public aux fins de l'application du droit pénal d'un Etat membre*'. We see here that the Court is using this term again in what we could call the French way.

B. For the time being, however, forget all these ideas and let us look at how the system works. I am not going to repeat but will at least go around the same issues already raised by Peter Sutherland and David Williamson. The question is about management.

Again allow me to start from the outset: what is management? You know that management as a generic concept is to allow things to be done through other people. This is the concept of management in the private sector, viable of course for the public sector as well in the sense that it can improve productivity and effectiveness. However, in the public sector, things are quite different in the sense that public policies are always complex inter-related issues, which finally makes management in the public sector the following: to allow things be done through other organizations. In my opinion this is the definition of public management at the national level. If we proceed now to the European level, things become more complicated because there are new actors involved: the Member States. So one could say that European public management is to allow things be done through, among others, the Member States. And I believe this is quite an interesting concept because, finally, the Commission, as the major executive institution of the Community is called upon or requested to allow things be done through the Member States. In other words, this is what has been pointed out by previous speakers as the cooperation, the coordination, the partnership at the European level.

If one would like to be a little bit more concrete, the whole story could be metaphorically presented as a coin, let us say the ECU, one side of which reflects policy formulation and the other side reflects policy implementation. This is management in Europe. So, as far as the first, the policy formulation, is concerned, things are quite clear. The Commission plays an important role as initiator, but it has to rely on the cooperation of the Member States. In other words, the Commission has to formulate what is the interest of the Community in proportion to the national interest. This concept of the Community interest is the outcome of debates at the Brussels level where national governments defend their national interests when working together to formulate an EC policy. The Community's interest is a distillation of the national interests as they are defended at Community level. Just a marginal note here, because it is quite important not to forget that experience has shown that it is not as simple as it looks, that national interests are always well represented and defended at the Brussels level, for the very simple reason that there is a lack of coordination at the national level.

As far as policy implementation is concerned, David Williamson was quite clear that this is not the role of the Commission. The Commission is to remain a small organization, the size of a national ministry, no larger, and the Commission has therefore to find other ways of managing the Community. And there is no other way than to work through the Member States. A legal basis can be found in Article 5 of the EC Treaty. All of this makes a quite complex system with many vertical links between the Commission and the Member States, between national and local or regional governments and horizontal links between Member States, the latter being quite important. It is not just a matter of implementing policies; it is how to implement them in a uniform manner, otherwise the entire Community system could break down.

The answer to this problem has been already repeated many times in the past and today, and it is called the 'subsidiarity principle'. I fully share the opinion of David Williamson and I am also quite convinced that this principle can be concrete. I know that there are a lot of doubts about it, but let me remind you that the Community has already had experience with subsidiarity in practice. I can give you two examples, the directives, in which the Community defines the goals while the Member States determine the measures appropriate for reaching the defined goals. Another example at the judiciary level is that of Article 177, judiciary cooperation, thanks to a system implemented by means of the preliminary rulings of the Court of Justice. So, the Community has already experienced such cooperation.

Now as regards the Maastricht Treaty, I think it is up to the lawyers again to give this still vague principle some real substance and make it a tool of management. Which means, in very simple words, the bottom-up approach in order to increase effectiveness and the thought behind this principle was to increase effectiveness and to get closer to the citizens. Another quality of this principle is to ensure the role of the Member States in both policy formulation and policy implementation. It is the principle on the sharing of powers and, thanks to this principle, we may be able to avoid in the future this endless debate about national sovereign rights and the supranational structure of the Community.

Finally, what does all of this mean? Evidently the European public service in the British sense does not consist of only the EC and, in particular, of the Commission officials. '*La fonction publique européenne*' consists not only of the public servants of the EC institutions but also all national public servants when they are implementing or participating in the formulation of the EC policies. The thirteen administrations together form the European public service.

We now have some clear ideas and we have a tool, a principle, to work out the Community's system. Again it is not that simple. First of all, we have had experience with the customs union - one of the first expressions of the completion of the single market - and we have realized that it is not that difficult to abolish frontiers. It is not that difficult to create coordinated policies, harmonized policies but the question is who is going to implement these policies? The public servants? OK - we have them. But are the appropriate mechanisms in place? In concrete terms, we abolished the frontiers but we did not think of setting up, for instance, a coordinating mechanism to manage the implementation of the customs' legislation. This is what we call management deficit, to which Peter Sutherland referred.

C. I now reach my final conclusion, which is the following: the European public service is in my view an activity and I base this view on the decisions of the Court.

The European public service is an activity of Community interest, defined through the policy formulation procedures and the distillation of the national interests, carried out by the European public administration which is articulated in the national administrations and the administration of the European Community according to the principle of subsidiarity.

This is a point I would like to stress: in my view, the European public service is not the British concept, that is just the staff of these institutions - there is a broader, more extensive network. Of course, the national systems and the EC system of public service remain independent and closed but, at the same time, there is mobility (see Article 48, paragraph 4). In addition, there are many other mechanisms which could unite these many closed, parallel systems. I would like just to point out two of them. One is the Informal Conference of Ministers and the Commissioner responsible for the Public Service. They have met three times and, finally, they realized that there is reason to continue to meet to debate, for instance, the quality of the public service at the European level. This is a mechanism for coordinating administrative action in the Community and to fill the gap, to create an European administrative space. This Informal Conference of the Ministers is taking regular shape now, it is repetitive and organized by the DG's Committee - that is the DG's responsible for the public service in cooperation with the relevant DG of the Commission, DG IX - with the scientific and professional support of EIPA.

The second mechanism is a major project launched by the Commission, to which I would like to express my deep appreciation for its continuous efforts and persistence in the person of Mr M. Ayrat, Head of DG III A2, Completion and Functioning of the Internal Market Division. This is the Action Plan for the Exchange of National Officials Responsible for the Implementation of Internal Market Legislation. As a matter of fact, the Commission of the European Communities outlined several steps it intended to take to make certain that the objective of ensuring correct and timely incorporation of Community legislation into national law be attained. One of these included the commitment to promote the exchange, between

Member State administrations, of national officials who are engaged in the implementation of Community legislation, with a view to enhancing administrative cooperation.

The experimental phase of the programme started in November 1990 with great success. As reported by the participants, the benefits derived from the programme can be summarized as the potential to dedicate themselves fully to one subject for a period of some two months, to acquire information, knowledge, a comparative perspective, new ideas, and greater confidence in their foreign counterparts. It also enabled them to build up new channels of communication, information and cooperation for the future, based on a network of personal contacts. All of these are essential for the objective of improving implementation and preparing administrations to manage the single market after 1992. This experimental phase will continue until overtaken by a five-year action plan, adopted on 22 September 1992 by the Council of the European Communities, to enter into force on 1 January 1993 (EEC Council Decision 481/92 OJ L 286, 1-10-1992).

Eligible participants are officials from the twelve Member States working at national, regional or local levels. The aim is to exchange officials at an intermediate level ('middle management') who are responsible for the enforcement of Community rules in certain fields of activity. For 1992, these fields of activity will be systems for the recognition of diplomas, export controls, pharmaceuticals, construction, machines, certification and public procurement. A maximum of 130 officials could participate in these exchanges. Each Member State sends the applications for officials it wishes to participate in the Action Plan to the European Institute of Public Administration (EIPA), which is responsible for carrying out the experimental phase of the Action Plan. The Commission of the European Communities, in contact with EIPA services, selects the candidates on the basis of their background, commitment to the implementation of Community rules in the envisaged fields, suitable knowledge of the required language, and will ensure a balanced spread of candidates from the different Member States. EIPA services notify the selected candidates and, together with the services of the host Member State, define the conditions for receiving the officials as regards both their work and their accommodation. The minimum duration of the exchange is 2 months, officials may choose their preferred starting dates, but applications have to be submitted at least three months before the chosen date. Basic expenses are paid to participants by EIPA. The official continues to be paid a normal salary by his/her home administration and to benefit from all related entitlements. The Member States concerned are called upon to finance 50 per cent of the subsistence costs while the Community covers all other expenses.

The legal status of exchange officials is the same as that of national officials and they are informed of the civil liability rules applicable to them in the host country.

Participants are required to participate in a training seminar on present Community policies and objectives and to draw up individual reports based on a questionnaire which is sent to them when they commence their stay abroad. These reports will serve as basis for an evaluation seminar and for a general report by EIPA to be submitted to the Commission together with the individual reports.

I remain confident that mechanisms like Article 48, paragraph 4, the Informal Conference of Ministers and the Commissioner responsible for the Public Service and, above all, the Exchange Action Plan, are at the core of the European integration process and will undoubtedly lead to the creation of new relations among the various administrative actors and to the emergence of a new concept of a European administration carrying out European public service in a European administrative space.